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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/653,486	08/31/2000	James J. Crow	804137-US-NP	4808
47394	7590	05/28/2009		
HITT GAINES, PC ALCATEL-LUCENT PO BOX 832570 RICHARDSON, TX 75083			EXAMINER DALENCOURT, YVES	
			ART UNIT 2457	PAPER NUMBER
			NOTIFICATION DATE 05/28/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@hittgaines.com

<b>Office Action Summary</b>	<b>Application No.</b> 09/653,486	<b>Applicant(s)</b> CROW, JAMES J.	
	<b>Examiner</b> YVES DALENCOURT	<b>Art Unit</b> 2457	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 34-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 34-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

This office action is responsive to amendment filed on 01/26/2009.

### *Response to Amendment*

The Examiner has acknowledged the amended claims 1, 7, 11, 17, and the submission of new claims 34 – 37.

### *Response to Arguments*

Applicant's arguments filed on 01/26/2009 have been fully considered but they are not persuasive.

Regarding Applicant's argument (pages 8 – 9) that the combination of Wang and Lechleider, as applied in the Office Action, fails to teach or fairly suggest at least one element of Claims 1 and 11 as amended. In particular, the combination as applied fails to teach the elements recited in Claim 1, e.g., "making automation agent software available to the user, the automation agent software configured to establish a dialog with an automation server; extending an offer via said dialog to form a contract for the broadband service", and "receiving an acceptance of the offer from the user, thereby forming a contract for said broadband service." The Examiner respectfully disagrees with Applicant's assertion because the combination of Wang and Lechleider do read on the claimed invention. **Wang discloses that an HTML window application (claimed automation agent software) may be presented at ATU-R and prompted for "UPLOAD SERVICE PROVISIONING". Once "OK" is pressed, ATU-R invokes**

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**TCP/IP or UDP/IP stack to communicate with ATU-C based on a client and server relationship. TCP/IP or UDP/IP packets communicated between ATU-R and ATU-C are using AAL5 which in turn using default VPI and VCI over DMT subchannels. Either TCP or UDP is applicable for the communication (see figs. 1 – 6; col. 5, lines 20 – 30; col. 6, lines 25 – 33; col. 11, lines 7 - 35).**

It appears that applicant is interpreting the claims very narrow without considering the broad teaching of the references used in the rejection. Applicants are reminded that the examiner is entitled to the broadest reasonable interpretation of the claims. The Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater 162 USPQ 541, 550-51 (CCPA 1969).

**In view of such the rejection is maintained as follow:**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 20 and 34 – 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al (US 6,636,505; hereinafter Wang) in view of Lechleider et al (US 6,091,713; hereinafter Lechleider).

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As per claim 1, Wang teaches a method of converting a personal computer for communicating information on a broadband communication network, said personal computer having a user and a physical location, comprising: determining whether said physical location falls within service boundaries for said broadband communication network (checking location of client and if service is available at that location; column 4, lines 53-60; column 5, lines 20-30; column 10, lines 63-67; column 11, lines 1-7); making automation agent software available to the user, the automation agent software configured to establish a dialog with an automation server (fig. 6; see CPE Service Selection Application; column 6, lines 25 – 32 ); extending an offer to form a contract for said broadband service (fig. 7; see service registry MIB extensions to identify a service to a user; column 6, lines 25 – 32); if said physical location falls within said service boundaries, receiving an acceptance of the offer from the user, thereby forming a contract for said broadband service (users respond with OK; column 5, lines 20-30; column 6, lines 25 – 32; column 11, lines 7-35); remotely qualifying said personal computer for said broadband communication network by determining whether said personal computer meets predetermined acceptance criteria for use of said broadband communication network (checking client system for compatibility with broadband network; column 6, lines 66-67; column 7, lines 1-15, lines 33-67; column 8, lines 1- 41, lines 64-67; column 9, lines 1-11); and fulfilling said order by initiating said automation agent software on said personal computer to interact with the user and thereby configure a modem coupled to said personal computer for access to said broadband

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communication network (configuring client to use the broadband network column 5, lines 20-67; column 6, lines 1-65).

Wang discloses substantially all the limitations, but fails to specifically disclose the steps of upgrading the broadband communication network to extend broadband service boundaries into a new geographic area; updating a database to include a plurality of physical locations within the new geographic area; and accessing the database to determine whether said physical location falls within the extended service boundaries for said broadband communication network.

However, Lechleider discloses the steps of upgrading the broadband communication network to extend broadband service boundaries into a new geographic area (abstract; col. 2, lines 17 – 51; col. 7, lines 24 - 47); updating a database to include a plurality of physical locations within the new geographic area (abstract; col. 2, lines 17 – 51; col. 7, lines 24 - 47); and accessing the database to determine whether said physical location falls within the extended service boundaries for said broadband communication network (abstract; col. 2, lines 17 – 51; col. 7, lines 24 - 47).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Wang by providing the steps of upgrading the broadband communication network to extend broadband service boundaries into a new geographic area; updating a database to include a plurality of physical locations within the new geographic area; and accessing the database to determine whether said physical location falls within the extended service boundaries for said broadband communication network as evidenced by Lechleider for the purpose

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of determining the viability of deploying ADSL in entire areas by creating lists of subscribers whose subscriber loop can support ADSL, thereby allowing for efficient and ubiquitous deployment of broadband services over the existing subscriber loop plant.

As per claim 2, Wang and Lechleider disclose all the limitations in claim 1, and Wang further discloses that said broadband communication network is a DSL network (column 6, lines 4-12).

As per claim 3, Wang and Lechleider disclose all the limitations in claim 2, and Wang further discloses that said qualifying step further comprises using a narrowband modem to contact a DSL line qualification server to test a physical line outside of said broadband communication network (column 5, lines 49-65).

As per claim 4, Wang and Lechleider disclose all the limitations in claim 1, and Wang further discloses that said broadband communication network is a cable network (col. 6, lines 4 – 45).

As per claim 5, Wang and Lechleider disclose the conversion method, system and control software of claim 4, and Wang further discloses wherein qualifying step further comprises detecting a carrier signal from said broadband communication network (Wang; column 6, lines 13-33).

As per claim 6, Wang and Lechleider disclose the conversion method, system and control software of claim 5, and Wang further discloses wherein said carrier signal has a signal strength and a set of error codes, and wherein said qualifying step is based at least part upon said signal strength and said error codes (Wang column 9, lines 1-11).

As per claim 7, Wang and Lechleider disclose all the limitations in claim 1, and Wang further discloses that said user is selected for said offer based on pre-established criteria (column 5, lines 54-65).

As per claim 8, Wang and Lechleider disclose all the limitations in claim 6, and Wang further discloses that at least some of said criteria are stored in a subscriber profile database (column 9, lines 36-55).

As per claim 9, Wang and Lechleider disclose all the limitations in claim 1, and Wang further discloses that said broadband communication network is an ISDN network (the network includes a fiber optic network; column 6, lines 4-12)

As per claim 10, Wang and Lechleider disclose all the limitations in claim 1 and Wang further discloses that said broadband communication network is a wireless network (col. 6, lines 4 - 6).

Claims 11 – 20 incorporate substantially all the limitations of claims 1 – 10 with minor variations in the claimed language, in system form, rather than method form. The reasons for the rejections of claims 1 – 10 apply to claims 11 – 20. Therefore, claims 11 – 20 are rejected for the same reasons.

As per claims 34 – 37, Wang discloses that an HTML window application may be presented at ATU-R and prompted for "UPLOAD SERVICE PROVISIONING". Once "OK" is pressed, ATU-R invokes TCP/IP or UDP/IP stack to communicate with ATU-C based on a client and server relationship. TCP/IP or UDP/IP packets communicated between ATU-R and ATU-C are using AAL5 which in turn using default VPI and VCI



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over DMT sub-channels. Either TCP or UDP is applicable for the communication (see figs. 1 – 6; col. 6, lines 25 – 33 and col. 11, lines 7 - 35).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Elwyn D. Jenkins (US 6,285,983) discloses a marketing systems and methods that preserve consumer privacy (see col. 3, lines 4 – 36 and col. 5, lines 33 – 62). Jenkins was previously used to address the added limitations to the claims, and which were original claimed.**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### **Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YVES DALENCOURT whose telephone number is (571)272-3998. The examiner can normally be reached on M-F 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/YVES DALENCOURT/  
Primary Examiner, Art Unit 2457